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NO. 91-1880

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

STATE OF OHIO, DEPARTMENT OF LIQUOR CONTROL,
Petitioner,

v.

BROOKPARK ENTERTAINMENT, INC.,

Respondent,

BRIEF OF BEECHCREST CENTER, INC., AS AMICUS CURIAE, IN OPPOSITION OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

WHETHER A LOCAL OPTION ELECTION, DIRECTED AT A SPECIFIC PREMISES, IS CONSTITUTIONAL, WHERE, AS A CONDITION PRECEDENT TO SUCH ELECTION, THE BUSINESS, AFTER NOTICE AND HEARING, HAS BEEN FOUND BY THE STATE LIQUOR CONTROL COMMISSION TO HAVE VIOLATED THE STATE'S LIQUOR CONTROL LAW.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINION BELOW 1

JURISDICTION 2

STATUTES INVOLVED 2

INTEREST OF AMICUS CURIAE 2

REASONS FOR NOT GRANTING WRIT 3

CONCLUSION 15

APPENDIX 16

TABLE OF AUTHORITIES

PAGES

Barry v. Barchi,
443 U.S. 55 (1979) 8

Beechcrest Center, Inc. v. John Hall, et al.,
Case No. C-1-91-792 1,2

Beechcrest Center, Inc. v. John Hall, et al.,
Case No. 92-3236 1

Bell v. Burson,
402 U.S. 535 (1971) 8

Bi-Metallic Investment Co. v. State Bd. of Equalization,
239 U.S. 441, 36 S.Ct. 141,
60 L.Ed. 772 (1915) 5,6

Board of Regents of State Colleges v. Roth,
408 U.S. 564 (1972) 7

Brookpark Entertainment Center, Inc. v. Taft,
Case Nos. 90-4130/91-3070 2

Brookpark Entertainment, Inc. v. Taft,
951 F.2d 710 (6th Cir. 1992) 3, 10, 12

Brown v. Board of Education of Topeka,
347 U.S. 483 (1954) 12

Citizens Against Rent Control v. City of Berkeley,
454 U.S. 290 (1981) 4

Civil Rights Cases,
109 U.S. 3 (1983) 6

Cleveland Board of Education v. Loudermill,
470 U.S. 532, 105 S.Ct. 390
84 L.Ed. 495 (1985) 10, 11

Daniels v. Williams,
474 U.S. 327 (1986) 7

Goldberg v. Kelly,
397 U.S. 254 (1970) 7, 8, 11

Hannah v. Larch,
363 U.S. 420 (1960) 11

Hunter v. Erickson,
393 U.S. 385 (1969) 4

Londoner v. Denver,
210 U.S. 373 (1908) 6

Lucas v. Colorado General Assembly,
377 U.S. 713 (1964) 4

Marbury v. Madison,
5 U.S. 137 (1803) 8

Martin v. Hunter's Lessee,
14 U.S. 304 (1816) 8

Mathews v. Eldridge,
424 U.S. 319 (1976) 11

Memphis Light, Gas & Water Div. v. Craft,
436 U.S. 1, 98 S.Ct. 1554
56 L.Ed. 2d 30 (1978) 7, 8, 9

Mirshak v. Joyce,
652 F. Supp. 359 (N.D. Ill. 1987) 5

Morissey v. Brewer,
408 U.S. 471 (1972) 11

O'Bannon v. Town Court Nursing Center,
447 U.S. 773 (1980) 13

Philly's v. Byrne,
732 F.2d. 87 (7th Cir. 1984) 3,4,5, 13

Reed v. Village of Shorewood,
704 F.2d 943 (7th Cir. 1983) 5

Rippey v. Texas,
193 U.S. 504, 24 S. Ct. 516
48 L.Ed. 767 (1904) 12, 13

San Antonio Independent School District v. Rodriguez,
411 U.S. 1 (1973) 12

87 South Rothchild Liquor Mart v. Kozubowski,
752 F. Supp. 839 (N.D. Ill., 1990) 5, 12

Terwilliger's Catering Plus, Inc.,
911 F.2d. 1168 (6th Cir. 1990) 9, 10

United States v. Florida East Coast Ry.,
410 U.S. 224, 93 S.Ct. 810 14

West Virginia State Board of Education v. Barnette
319 U.S. 624 (1943) 12

Wisconsin v. Constantineau,
400 U.S. 433 (1972) 13

STATUTES

28 U.S.C. § 1254 (1) 2

Ohio Rev. Code §4301.26 4

Ohio Rev. Code §4301.321 2,4

Ohio Rev. Code §4301.331 2,4

Ohio Rev. Code §4301.352 2,4

Ohio Rev. Code §4301.362 2,4

Ohio Rev. Code §4303.271 2

Ohio Rev. Code §4303.273 4

OTHER AUTHORITIES

Ill. Rev State Ch. 43 § 9 4

KY § 242.125 4

L. Tribe, American Constitutional Law (1988 2d,ed.) 7

Tex. Alco. Bev. Code Ann § 25.11 4

The New Fuedal System, 19 KY L.J. 1 (1930) 11

The New Property, 73 Yale L.J. 733 (1964) 9

U.S. Const. Amendment XIV 2

U.S. Const. Amendment XXI 2

U.S. Const. Art. VI, Sect. 1, cl. 1 11

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Beechcrest Center, Inc. has consent of both parties to file this brief. (See appendix A-5, A-6)

OPINIONS BELOW

The opinion of the United States District Court Southern District of Ohio Western Division issued February 5, 1992 (See A-1) under the name of *Beechcrest Center, Inc. v. John*

Hall, et al., Case No. C-1-91-792, is not reported, but appealed to the Sixth Circuit Court, Case No. 92-3236 and being held in abeyance pending the out come of *Brookpark Entertainment, Inc.*, Respondent's case. (See A-3, A-4).

JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit was issued on February 20, 1992. The jurisdiction of this Court to review the judgment of the Sixth Circuit is invoked under 28 U.S.C. §1254(1). (U.S. Supreme Court Rule 37 to answer a Writ of Certiorari with an Amicus Curiae Brief.)

STATUTES INVOLVED

The statutes involved in this case are Ohio Rev. Code §§4301.321, 4301.331, 4301.352, 4301.362 and 4303.271. Additionally for this Court's consideration are Amendments XIV and XXI of the U.S. Constitution.

THE INTEREST OF AMICUS CURIAE

Beechcrest Center, Inc. has a strong interest in opposing the State of Ohio's Petition for Writ of Certiorari. Respondent, Brookpark Entertainment Center, Inc. has decided not to file a brief in opposition to State of Ohio's Writ, thus Beechcrest Center, Inc. is compelled to do so as *Beechcrest Center, Inc. v. John Hall*, Case No. C-1-91-792, was appealed to the Sixth Circuit Court of Appeals from the Federal District Court by the State of Ohio, Department of Liquor Control, but is being held in abeyance pending the disposition by the U.S. Supreme Court in *Brookpark*. (See appendix A-3, A-4). In *Beechcrest Center, Inc. v. John Hall, et al.*, the Ohio Department of Liquor Control and

Ohio Liquor Commission were permanently enjoined from enforcing the results of a November 7, 1989 option election that was found to be unconstitutional on February 5, 1992. This disposition was responsive to the December 16, 1992 finding of the United States Court of Appeals for the Sixth Circuit that the Ohio particular premises local option election statute was in violation of the federal Constitution's 14th Amendment Due Process Clause. *Brookpark Entertainment Center, Inc. v. Taft*, Case Nos. 90-4130/ 91-3070 (6th Cir., Dec. 16, 1991). The legal issues in both cases are identical. Both permit holders, Beechcrest Center, Inc., dba Mingles, and Brookpark Entertainment Center, Inc., dba Crazy Horse Saloon, were found to have violated Ohio liquor law, yet in neither case was a penalty assessed. Both permit holders were placed on the ballot in their respective precincts and the vote was to cancel their permits. Beechcrest is presently operating on its Ohio liquor licenses while Brookpark is not.

REASONS FOR NOT GRANTING THE WRIT

A. THERE EXISTS NO INTRACTABLE CONFLICT AMONG THE CIRCUITS

The decision of the United States Court of Appeals for the Sixth Circuit is correct and fully consistent with the decision of the United States Court of Appeals for the Seventh Circuit, the only other circuit court to address targeted referenda such as the Ohio "particular premises" statute. In *Philly's v. Byrne*, 732 F.2d 87 (7th Cir. 1984), the court noted:

> The concern is that the voters might "gang up" to drive out of business a seller of liquor whom they disliked for reasons unrelated to any plausible public interest. This is a distinct type of arbitrary action that the requirement of fair procedure is designed to prevent, or at least, make less likely to occur. (Citations omitted). It is therefore relevant to point out that the Illinois act does not permit the precinct's voters to single out a particular liquor seller to shut down. Id. at 92;

It is this logic upon which the Sixth Circuit rested its determination that the Ohio "particular premises" local option statute fails

to provide due process. *Brookpark Entertainment Center, Inc. v. Taft, et al.*, 951 F.2d 710 (6th Cir. 1992).

Petitioner fears "that by defining the question as the process due to prevent arbitrariness, the court invites the prospect that other local option elections may be rejected." (Petition for Writ of Certiorari at 11.) A review of the decision in *Philly's* should allay petitioner's fears. Although, the Seventh Circuit expressed concern over particular premises option elections, the court found that Illinois' local option law did not violate the Due Process Clause based on the fact that Illinois' law required voters to "shut down all the retail liquor outlets in the precinct in order to shut down one." Thus, it is only those option elections which deprive license holders of their constitutional due process which are in danger of rejection.

Ohio currently, is the only state that has a particular premises option election. Of the 50 states together with the District of Columbia, 36 have local option election legislation and of those 36 states, 89% deal with political subdivisions larger than a precinct classification. The state of Texas, Kentucky, Illinois and Ohio are the only states which allow local option elections in a political subdivision as small as a precinct. (Tex. Alco. Bev. Code Ann. §25.11, Ky §242.125, Ill. Rev. Stat. Ch. 43 §9.)

The Ohio targeted referendum statutory scheme is, in fact, an exercise in adjudication, not legislation, and it cannot stand the test of the constitutions commitment to procedural regularity and substantive fairness.

Whether an action is taken pursuant to a vote directly by the electorate or by a vote of the legislature, that action must comply with all constitutional norms and constraints. "It is irrelevant that the voters rather than a legislative body [adopted the measure], because voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation." *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 295 (1981). See also, *Hunter v. Erickson*, 393 U.S. 385, 392 (1969) ("The sovereignty of the people is itself subject to those constitutional limitations which have been duly adopted and remain unrepealed"); *Lucas v. Colorado General Assembly*, 377 U.S. 713, 737 (1964) ("the fact that a challenged [action] was approved by the electorate is without federal constitutional

significance, if the scheme adopted fails to satisfy the basic requirements of the [Constitution]"). Once this principle is recognized, it becomes obvious that Ohio Revised Code §§4301.26, 4301.321, 4301.331, 4301.352, 4301.362 and 4303.273 cannot stand. For it is hard to imagine a scheme which deprives a property holder of its rightful interests with less due process of law than the scheme created by the above statutes.

In *Reed v. Village of Shorewood*, 704 F.2d 943 (7th Cir. 1983), the Seventh Circuit reviewed Illinois' liquor regulation system to determine "whether under Illinois law, a liquor license is securely and durably the licensee's." Id. at 948. Based on its evaluation of the illinois licensing system, the court not only held that holders of liquor licenses enjoy constitutionally protected property interests in their licenses, but held that applicants for renewal of licenses hold constitutionally protected property interests as well. Id. at 949.

In a number of cases since *Reed*, the Seventh Circuit and courts in the Northern District of Illinois have reaffirmed that Illinois liquor licenses constitute property interests for purposes of the federal constitution. See *Philly v. Byrne*, 732 F.2d 87, 89-90 (7th Cir. 1984) ("an Illinois liquor license is property within the meaning of the Fourteenth Amendment"); *Mirshak v. Joyce*, 652 F. Supp. 359, 367 (N.D. Ill. 1987) (Williams, J.). *87 Rothchild Liquor Mart v. Kozubowski*, 752 F. Supp. 839 (N.D. Ill. 1990).

Under Ohio Revised Code §§4301.26, 4301.321, 4301.331, 4301.352, 4301.362 and 4303.273, liquor licenses may be revoked by a simple majority of a precinct's voters for any or no reason. This provision is wholly inconsistent with the dictates of the Due Process Clause and the Constitution's commitment to fairness: it provides no process for the affected permit holders; no safeguards against arbitrary or even invidious action by the voters, and no opportunity for review of the decision. The Due Process Clause does not allow divestment of just a few individual property interests to turn on popularity contests, whether those contests are labelled legislative or adjudicative decisions.

It has long been held, of course, that bodies enacting general legislative rules need not adhere to the conventional procedures that due process typically requires of governmental action that focuses on a specific individual, depriving him of a property

interest. In *Bi-Metallic Investment Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915), for example, Justice Holmes explained that where government is passing "[g]eneral statutes"--in that case an across-the-board increase in the valuation of all taxable property in the City of Denver--due process does not require that every person whose property will be affected must be given a chance to be heard. It is clear, though, that the targeted referendum leaving out certain permit holders cannot seek refuge under any relaxed standard of legislative due process. For the targeted referendum is the antithesis of general legislation; it focuses on a specific tavern owner which alone will suffer the burdens of the enactments. Even as he declared the rule in *Bi-Metallic*, Justice Holmes distinguished cases involving individualized decisions.

> "In *Londoner v. Denver*, 210 U.S. 373, 385 (1908), a local board had to determine 'whether, in what amount, and upon whom' a tax for paving a street should be levied for special interests. A relatively small number of persons was concerned, who were exceptionally affected, in each case upon individual grounds, and it was held that they had a right to a hearing." *Bi-Metallic*, 239 U.S. at 445-446.

One need not go back to *Bi-Metallic* and *Londoner*, however, to show how inapplicable the relaxed rules of legislative due process are to this case.

B. THE SIXTH CIRCUIT'S ANALYSIS COMPORTS WITH PRECEDENT

The framework for a procedural Due Process case is well-settled. It was correctly employed by the panel below to strike down Ohio's particular premises liquor option election as unconstitutional. As such, no reason exists to invoke the Supreme Court's discretionary power of review to upset that panel's decision.

To prove the Sixth Circuit's fidelity to precedent, it is necessary to review a procedural Due Process analysis, which begins with a finding of the requisite state action to trigger the com-

mands of the 14th Amendment. Civil Rights Cases, 109 U.S. 3 (1883) (holding that the 14th Amendment was intended as a limit against public, not private, conduct). When the state, or an actor sufficiently linked to the state, is acting, the 14th Amendment mandates that the substantive right to property be maintained unless adequate procedures exist to justify a deprivation. Of course, that begs the question of how to define both property and process due. In *Board of Regents v. Roth*, 408 U.S. 564 (1972) the Court elaborated on property as "defined by existing rules or understandings that stem from an independent source such as state law -- rules of understandings that secure certain benefits and that support claims of entitlement to those benefits." Furthermore, because of its locus in the 14th Amendment, the determination as to whether an independently created entitlement is Due Process property is one for the federal judiciary to make. *Memphis Light, Gas and Water v. Craft*, 436 U.S. 1, 9 (1978). Upon a conclusion that a protectable property interest was infringed, it must be decided whether the infringement was pursuant to the minimum process due. A deprivation can be entirely legitimate when minimum process due exists. *Daniels v. Williams*, 474 U.S. 327 (1986) (Stevens, J., concurring). The process due, however, is not subject to talismonic definition. It is contingent upon circumstances and the interests of both the government and the putative victim of the unconstitutional deprivation. *Goldberg v. Kelly*, 397 U.S. 254 (1970). Throughout this balancing act, the rationales which undergird Due Process protection, the interest in achieving a rational result, accountability and an adequate explanation for the government's decision, must be foundational. L. Tribe, American Constitutional Law (1988 2d ed.).

In coming to its decision, the court below faithfully subscribed to the above analysis. Failure to conform to Supreme Court precedent is not, therefore, an adequate reason to justify the granting of Certiorari.

C. PETITIONER'S BRIEF IS FATALLY FLAWED

Petitioner's Writ is fatally flawed, contrary to Supreme Court precedent, contrary to that precedent as applied by the various Circuits of the United States Court of Appeals and contrary to logic.

The State advances a legal theory opposed to the familiar premises that the federal courts are empowered, for purposes of the Fourteenth Amendment's Due Process Clause, to characterize the substance of state preferred entitlement. Petitioner's argument notwithstanding, it is federal law which controls the analysis as to whether a state entitlement rises to the level of property within the meaning of Due Process.[1] *Memphis Light, Gas & Water v. Craft*, 436 U.S. 1, 9 (1978). Thus, petitioner's reliance on Ohio decisional law, which has consistently labeled liquor licenses as a revocable privilege and not property, is misplaced. It is too late in the day to argue that Ohio courts can give dispositive construction to federal Constitutional clauses. See *Marbury v. Madison*, 5 U.S. 137 (1803) (it is the power of the federal judiciary to say what the law is); *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816) (extending *Marbury* so as to reserve conclusive interpretative power over the federal Constitutional to the federal courts).

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[1] State statutory entitlements are protectable interests within the context of procedural Due Process. Goldberg v. Kelly, 397 U.S. 254 (1970). In that opinion it was noted that "[i]t may be realistic today to regard welfare entitlement as more like property than a "gratuity." Much of the existing wealth in this country takes the form of rights that do not fall within traditional common law concepts of property." Id. at 255. See also Bell v. Burson, 402 U.S. 535, 539 (1971) (holding that a driver's license is a sufficient interest so as to trigger a Due Process hearing); Barry v. Barchi, 443 U.S. 55, 64 (1979) (a horse trainer's license is Due Process property within the meaning of the Clause). This body of case law had its genesis with Commentator Charles Reich's seminal article The New Property, 73 Yale L.J. 733 (1964) where it was contended that:

> One of the most important developments in the United States during the past decade has been the emergence of government as a major source of wealth. Government is a gigantic syphon. It draws in revenue and power, and pours forth wealth: money, benefits, services, contracts, franchises and licenses. Government has always had this function. But while in early times it was minor, today's distribution of largess is on a vast, imperial scale. Id. at 768-71.

For an earlier appreciation of this same phenomena, see Pound, The New Fuedal System, 19 KY L.J. 1 (1930). Ohio's licensing regime must be viewed within the parameters of this contemporary diminution of individual security.

Petitioner goes on to concede the *Memphis* principle, arguing instead that the Sixth Circuit misapplied the law by placing undue emphasis on its prior decision in *Terwilliger's Catering Plus, Inc.*, 911 F.2d 1168 (6th Cir. 1990). (Petitioner's Writ of Certiorari at 7) There, the Sixth Circuit concluded that an Ohio liquor license is property within the context of both the Bankruptcy Code and the federal tax lien statute. Id. at 1171-72. Petitioner seeks to distinguish *Terwilliger's* from the case at bar on the supposition that property in the Due Process sense is distinct from that envisioned by the Bankruptcy Code or the tax lien statute.[2] This is a distinction without a difference. Both courts looked to Ohio statutory law for indicia of property as contemplated by the traditional connotation of that term, not in a particularized manner that would make property in one sense different from another. In fact, the *Terwilliger's* court acknowledged that "[t]he term "property" is not defined by the tax lien statute . . ." Id. at 1171. It then proceeded to analyze the Ohio's statutory scheme, finding as determinative the following facts:

> . . . Ohio allows a liquor license to be transferred, sold, inherited and renewed. See generally, Ohio Rev. Code Ann. Sections 4303.26, 4303.271 and 4303.273 (Anderson 1988) and Ohio Admin. Code Section 4301:1-1-14. It is undeniable that a liquor license has pecuniary value to its holder to sell alcoholic beverages and can be sold for value. Since the state has vested the owner of a liquor license with these beneficial interests, a liquor license constitutes "property" or rights to property within the meaning of the federal tax lien law. Id. at 1171.

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[2] Although petitioner asserts a distinction between Terwilliger's focus, the Bankruptcy Code and the tax lien statute, and the Court's focus in the case sub judice, the Due Process Clause, it fails to mention the significance of the distinction. Thus, it appears as a hollow, meaningless observation.

In *Brookpark*, the court noted that "[i]n addition to the rights to transfer, sell, bequeath, and renew, a holder of an Ohio liquor license also has the right to appeal and adverse determination of the Department." *Brookpark* supra. at 8, (citations omitted). Both courts maintained a common conception of property, in either its statutory or procedural Due Process persona, justifying the panel's use of *Terwilliger's*.

Also, petitioner disputes the *Terwilliger's* analysis on the grounds that it ignored aspects of Ohio's liquor licensing regime so as to distort the substantive nature of an Ohio liquor license. As can be gleaned from the discussion above, that claim lacks merit. Surely the court below was justified in concluding that a Due Process property interest attached to respondent's liquor license on the weight of the factors it enumerates.

In Section II of petitioner's Writ at 8-9, petitioner posits that respondent's concededly protectable property interest is tempered by the particular premises referendum. In other words, the Ohio Assembly, in granting a property interest with liquor licenses, reserved the right of revocation to the people in the relevant precinct as part of that property interest. On this point, *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) is controlling:

> The point is straightforward: the Due Process Clause provides that certain substantive rights -- life, liberty, and property --cannot be deprived except pursuant to constitutionally adequate procedures. **The categories of substance and procedure are distinct**. Were the rule otherwise, the Clause would be reduced to a mere tautology. "Property" cannot be defined by **the procedures provided for its deprivation** any more than can life or liberty. The right to due process is conferred, not by legislative grace, but by constitutional guarantee. Id. at 541 (emphasis added).

Thus, procedure cannot be collapsed into substance. Petitioner's argument that the referendum is a component of the bundle of rights and obligations conferred to a liquor licensee involves a perfect example of the forbidden mix of substance and procedure. Because the referendum is the procedure employed for license revocation, any analysis that combines that referen-

dum with respondent's substantive property interest would be precluded. *Loudermill*, supra..

A positivist approach, such as the type advanced by petitioner merging the deprivation mechanism with the property interest, ignores the primacy of federal Constitutional law over state statutory law.[3] Ohio can no more define Due Process through its construction of statutory entitlement than it can define property within the meaning of that Clause through its judicial institutions. The federal courts have that responsibility. Art. VI, Sect. 1, cl. 1. Additionally, by characterizing the referendum as informing the property interest, petitioner ignores the settled two-tiered analysis for procedural Due Process cases by circumventing the second-tier: the inquiry as to whether the process given is the process due. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976).

Petitioner's attempt to explain away *Loudermill*, see petitioner's Writ of Certiorari at 9, is not persuasive since its circular logic brings *Loudermill* back into play as the on-point, controlling case: ". . . the starting point is still what interest exists . . . If an interest is conferred at all it is expressly made subject by statute to the ability of the people to enact a prohibition upon local referendum." Again, its distinction notwithstanding, petitioner's argument is one where process amalgamates with substance.

At petitioner's Writ of Certiorari at 9, petitioner again concedes the property interest but instead argues that Ohio's statutory scheme offers all the process due. Petitioners confers a talismanic quality to the notice provided by statute that the Ohio liquor license has a potential to be canceled upon the event of a violation of Ohio's liquor control law. A violation, no matter how inconsequential, can trigger a petition and referendum with the purpose of revoking that license. Notice, however, has never been considered a talisman in determining the process due. This Court has insisted, on more than one occasion, that the procedural methodology be free to meet the exigencies of each unique situation. See *Hannah v. Larch*, 363 U.S. 420, 442 (1960); *Morissey v. Brewer*, 408 U.S. 471, 481 (1972).

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[3] An academic attack on the positivist approach can be found in Redish & Marshall, 95 Yale L.J. 455, 459-63.

The court below found as dispositive "the arbitrariness inherent in a referendum." *Brookpark*, at 11.; and, far from ignoring the statute's notification to liquor licensees of the potential deprivation, the court concluded that even with notice "the problem [with Ohio's particular premises referendum] is the lack of proportionality. The severity of the violation is completely unrelated to the possibility of a revocation referendum." Id. at 13. Precedent fully permits this type of balancing.

Additionally, petitioner takes issue with the Sixth Circuit's use of *87 South Rothchild Liquor Mart v. Kozubowski*, 752 F. Supp. 839 (N.D. Ill., 1990) as persuasive precedent. (Petition for Writ of Certiorari at 9) This case was cited by the Sixth Circuit Court to demonstrate the constitutional infirmities inherent in a particular premises liquor option election, namely the potential for discriminatory treatment against disliked licensees, and not for the premises that Ohio's option law is an exact facsimile of the one in Illinois. Again, petitioner elaborates on an irrelevant distinction.

Thereafter, at Petition for Writ of Certiorari at 10, petitioner argues that the local option election upheld in *Rippey v. Texas*, 193 U.S. 504 (1904) should have bound the court below. Petitioner characterizes the *Rippey* holding as supported by the substantive power of a state assembly to modify rights it has the power to obviate completely. Yet, the "greater includes the lesser" approach no longer carries the constitutional punch it once did. For purposes of illustration, consider that while Ohio has no constitutional duty to provide for public education, *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), it cannot condition attendance in the public schools on belonging to a particular race, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), or upon a morning recitation of the pledge of allegiance, *West Virginia State Board of Education V. Barnette*, 319 U.S. 624 (1943). Analogously, it would follow that while the states may limit or totally prohibit the sale of alcohol, they cannot do so arbitrarily. This is a premise flowing from the paramount, post-Civil War constitutional principle that the Fourteenth Amendment speaks to what government cannot do, acting as an external barrier to state action that concededly has its origin in legitimate, affirmative power. Therefore, even though

petitioner frames the argument in the posture of the Twenty First Amendment as a font for state power, the Fourteenth Amendment's procedural Due Process Clause intervenes since the state has gone too far. *Wisconsin v. Constantineau*, 400 U.S. 433, 436 (1972) (holding that the Twenty First Amendment did not modify the 14th Amendment).

Additionally, petitioner fails to account for the fact that the particular premises scheme, struck down in both the Sixth and Seventh U.S. Circuit Courts of Appeals, is different from the general "wet/dry" scheme upheld in *Rippey*. This fact alone can reconcile the holding in *Rippey* with the case sub judice. When a revocation moves from the general (for example, a state-wide, city-wide or county-wide ban on the sale of alcohol) to the specific (respondent's liquor license deprivation), especially in an area as small as a precinct consisting of only 5 or 6 streets, the interest in due process is heightened. *O'Bannon v. Town Court Nursing Center*, 447 U.S. 773, 800-801 (1980) (Blackmun, J., concurring). For it follows that the general affects all, even decision-makers, while, comparatively, the specific insulates decision-makers from the consequences emanating from their actions. Indeed, it is on that doctrine that this case and Judge Posner's Seventh Circuit decision of *Philly's v. Byrne*, 732 F.2d 87 (7th Cir. 1984) holds. In *Philly's*, the Seventh Circuit upheld Illinois's general wet/dry liquor option election against a procedural Due Process attack. Importantly, however, it anticipated Ohio's particular premises scheme and the constitutional problems it would raise:

> "The concern is not that the voters of a precinct might make a mistake in deciding to ban the retail sale of liquor; when they vote on the question they are voting their personal values and there is no criterion by which a court or other outsider could judge their decision correct or incorrect. The concern is that the voters might "gang up" to drive out of business a seller of liquor whom they disliked for reasons unrelated to any plausible public interest. This is a distinct type of arbitrary action that the requirement of fair procedure is designated to prevent, or at least make less likely to occur...."

"It is therefore relevant to point out that the Illinois act does not permit the precinct's voters to single out a particular liquor seller to shut down.... The precinct can choose only between allowing and not allowing the retail sale of alcoholic beverages...."

"The voters must shut down all retail liquor outlets in the precinct in order to shut down one and they must shut them down for four years because a new referendum cannot be held before that period has elapsed. This means not only that the licensee who is disliked is protected to some extent by the licensee who is liked but also that the voters cannot impose costs on liquor sellers without imposing costs on themselves-costs of not being able to buy liquor in the precinct."

"The requirement that the precinct electorate act across the board shows that the judgment the voters are asked to make is legislative rather than adjudicative in character." Id. at 92.

A referendum must be more general than not: i.e., a particular zone must choose between allowing or not allowing the sale of alcoholic beverages by all its retailers. The fact that a statute applies across the board provides a substitute safeguard against impermissible discrimination. *United States v. Florida East Coast Ry.*, 410 U.S. 224, 93 S.Ct. 810. The Sixth and Seventh Circuits both embrace procedural Due Process as evincing a concern for achieving fair and rational results.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit be denied.

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as Amicus Curiae

DATED: June 19, 1992

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

SOUTHERN DISTRICT OF OHIO - WESTERN DIVISION

BEECHCREST CENTER, INC.
dba Hingles,

V

JOHN HALL, et al

JUDGMENT IN A CIVIL CASE

CASE NUMBER C-1-91-792

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to [redacted] hearing before the Court. The issues have been [redacted] heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

the defendants are hereby permanently enjoined from enforcing the results of the unconstitutional local option election against Beechcrest Center, Inc.

5 FEB 1992
Date

KENNETH J. MURPHY
Clerk

(By) Deputy Clerk

28

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